

HOUSE BILL No. 1720

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-28-15; IC 6-1.1-45; IC 6-3.1.

Synopsis: Enterprise zone incentives. Authorizes a municipality to require an enterprise zone business to continue providing assistance to an urban enterprise association that continues operating as a nonprofit corporation following the expiration of the enterprise zone. Authorizes the nonprofit corporation to assign any amount of the assistance received from an enterprise zone business to another nonprofit corporation. Grants the redevelopment commission of an excluded city in Marion County the power to approve or reject an application for an enterprise zone investment deduction claimed for an enterprise zone location that is also within a redevelopment district in the excluded city. Changes the annual deadline for filing an enterprise zone investment deduction application. Allows a county auditor to grant a 30 day extension for filing for an enterprise zone investment deduction application. Allows an urban enterprise association to waive a failure to file a timely or complete enterprise zone investment deduction application. Allows a taxpayer to claim the enterprise zone investment deduction for an assessment date that occurs after the expiration of the enterprise zone. Increases the amount of the enterprise zone loan interest credit from 5% to 15% of the interest received from qualified loans. Allows trusts, estates, corporations, and pass through entities to claim an enterprise zone investment cost credit. (Current law allows pass through entities to claim the credit only in Vigo County and does not allow trusts, estates, or corporations to claim it in any county.) Establishes the enterprise zone job creation tax credit.

Effective: January 1, 2007 (retroactive); March 1, 2007 (retroactive); July 1, 2007.

Klinker, Koch, Harris E, Buell

January 26, 2007, read first time and referred to Committee on Small Business and Economic Development.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1720

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-28-15-3, AS ADDED BY P.L.214-2005,
2 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2007 (RETROACTIVE)]: Sec. 3. As used in this
4 chapter, "zone business" means an entity that accesses at least one (1)
5 tax credit, deduction, or exemption incentive available under this
6 chapter, IC 6-1.1-20.8, IC 6-1.1-45, IC 6-3-3-10, IC 6-3.1-7, ~~or~~
7 IC 6-3.1-10, **or IC 6-3.1-31.**

8 SECTION 2. IC 5-28-15-5, AS ADDED BY P.L.214-2005,
9 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
10 JULY 1, 2007]: Sec. 5. (a) The board has the following powers, in
11 addition to other powers that are contained in this chapter:

- 12 (1) To review and approve or reject all applicants for enterprise
13 zone designation, according to the criteria for designation that this
14 chapter provides.
15 (2) To waive or modify rules as provided in this chapter.
16 (3) To provide a procedure by which enterprise zones may be
17 monitored and evaluated on an annual basis.



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(4) To adopt rules for the disqualification of a zone business from eligibility for any or all incentives available to zone businesses, if that zone business does not do one (1) of the following:

(A) If all its incentives, as contained in the summary required under section 7 of this chapter, exceed one thousand dollars (\$1,000) in any year, pay a registration fee to the board in an amount equal to one percent (1%) of all its incentives.

(B) Use all its incentives, except for the amount of the registration fee, for its property or employees in the zone.

(C) Remain open and operating as a zone business for twelve (12) months of the assessment year for which the incentive is claimed.

(5) To disqualify a zone business from eligibility for any or all incentives available to zone businesses in accordance with the procedures set forth in the board's rules.

(6) After a recommendation from a U.E.A., to modify an enterprise zone boundary if the board determines that the modification:

(A) is in the best interests of the zone; and

(B) meets the threshold criteria and factors set forth in section 9 of this chapter.

(7) To employ staff and contract for services.

(8) To receive funds from any source and expend the funds for the administration and promotion of the enterprise zone program.

(9) To make determinations under IC 6-3.1-11 concerning the designation of locations as industrial recovery sites and the availability of the credit provided by IC 6-1.1-20.7 to persons owning inventory located on an industrial recovery site.

(10) To make determinations under IC 6-1.1-20.7 and IC 6-3.1-11 concerning the disqualification of persons from claiming credits provided by those chapters in appropriate cases.

(11) To make determinations under IC 6-3.1-11.5 concerning the designation of locations as military base recovery sites and the availability of the credit provided by IC 6-3.1-11.5 to persons making qualified investments in military base recovery sites.

(12) To make determinations under IC 6-3.1-11.5 concerning the disqualification of persons from claiming the credit provided by IC 6-3.1-11.5 in appropriate cases.

(b) In addition to a registration fee paid under subsection (a)(4)(A), each zone business that receives an incentive described in section 3 of this chapter shall assist the zone U.E.A. in an amount determined by the legislative body of the municipality in which the zone is located. If

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a zone business does not assist a U.E.A., the legislative body of the municipality in which the zone is located may pass an ordinance disqualifying a zone business from eligibility for all credits or incentives available to zone businesses. If a legislative body disqualifies a zone business under this subsection, the legislative body shall notify the board, the department of local government finance, and the department of state revenue in writing not more than thirty (30) days after the passage of the ordinance disqualifying the zone business. Disqualification of a zone business under this section is effective beginning with the taxable year in which the ordinance disqualifying the zone business is adopted.

(c) The legislative body of the municipality in which a zone is located may adopt an ordinance requiring each zone business that receives an incentive described in section 3 of this chapter to provide assistance to a nonprofit corporation that:

- (1) served the zone as a U.E.A. before incorporating as a nonprofit corporation; and**
- (2) continues to operate after the expiration of the zone as permitted under section 14(b)(3) of this chapter.**

With the approval of the legislative body, a nonprofit corporation receiving assistance under this subsection may assign any amount of the assistance to another nonprofit corporation.

SECTION 3. IC 6-1.1-45-9, AS AMENDED BY P.L.154-2006, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 9. (a) Subject to subsection (c), a taxpayer that makes a qualified investment is entitled to a deduction from the assessed value of the taxpayer's enterprise zone property located at the enterprise zone location for which the taxpayer made the qualified investment. The amount of the deduction is equal to the remainder of:

- (1) the total amount of the assessed value of the taxpayer's enterprise zone property assessed at the enterprise zone location on a particular assessment date; minus
- (2) the total amount of the base year assessed value for the enterprise zone location.

(b) To receive the deduction allowed under subsection (a) for a particular year, a taxpayer must comply with the conditions set forth in this chapter.

(c) A taxpayer that makes a qualified investment in an enterprise zone established under IC 5-28-15-11 that is under the jurisdiction of a military base reuse authority board created under IC 36-7-14.5 or IC 36-7-30-3 is entitled to a deduction under this section only if the deduction is approved by the military base reuse authority board.

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(d) A taxpayer that makes a qualified investment at an enterprise zone location that is located within a redevelopment district established under IC 36-7-15.1-38 is entitled to a deduction under this section only if the deduction is approved by the redevelopment commission of the redevelopment district.

SECTION 4. IC 6-1.1-45-10, AS ADDED BY P.L.214-2005, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) A taxpayer that desires to claim the deduction provided by section 9 of this chapter for a particular year shall file a certified application, on forms prescribed by the department of local government finance, with the auditor of the county where the property for which the deduction is claimed was located on the assessment date. The application may be filed in person or by mail. If mailed, the mailing must be postmarked on or before the last day for filing. **Except as provided in subsections (c) and (d),** the application must be filed before May 15 of the assessment year to obtain the deduction.

(b) A taxpayer shall include on an application filed under this section all information that the department of local government finance and the corporation require to determine eligibility for the deduction provided under this chapter.

(c) The county auditor may grant a taxpayer an extension of not more than thirty (30) days to file the taxpayer's application if:

- (1) the taxpayer submits a written application for an extension before May 15 of the assessment year; and**
- (2) the taxpayer is prevented from filing a timely application because of sickness, absence from the county, or any other good and sufficient reason.**

(d) An urban enterprise association created under IC 5-28-15-13 may by resolution waive failure to file a:

- (1) timely; or**
- (2) complete;**

deduction application under this section. Before adopting a waiver under this section, the urban enterprise association shall conduct a public hearing on the waiver.

SECTION 5. IC 6-1.1-45-12, AS ADDED BY P.L.214-2005, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MARCH 1, 2007 (RETROACTIVE)]: Sec. 12. **(a) Subject to subsection (b), a taxpayer may claim a deduction under this chapter for an assessment date that occurs after the expiration of the enterprise zone in which the enterprise zone property for which the taxpayer made the qualified investment is located.**

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(b) A taxpayer may not claim a deduction under this chapter for more than ten (10) years.

SECTION 6. IC 6-3.1-7-2, AS AMENDED BY P.L.4-2005, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: Sec. 2. (a) A taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year if the taxpayer:

- (1) receives interest on a qualified loan in that taxable year;
- (2) pays the registration fee charged to zone businesses under IC 5-28-15-5;
- (3) provides the assistance to urban enterprise associations required from zone businesses under IC 5-28-15-5(b); and
- (4) complies with any requirements adopted by the board of the Indiana economic development corporation under IC 5-28-15 for taxpayers claiming the credit under this chapter.

However, if a taxpayer is located outside of an enterprise zone, subdivision (4) does not require the taxpayer to reinvest its incentives under this section within the enterprise zone, except as provided in subdivisions (2) and (3).

(b) The amount of the credit to which a taxpayer is entitled under this section is ~~five~~ **fifteen** percent (~~5%~~) (**15%**) multiplied by the amount of interest received by the taxpayer during the taxable year from qualified loans.

(c) If a pass through entity is entitled to a credit under subsection (a) but does not have state tax liability against which the tax credit may be applied, an individual who is a shareholder, partner, beneficiary, or member of the pass through entity is entitled to a tax credit equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, beneficiary, or member is entitled.

The credit provided under this subsection is in addition to a tax credit to which a shareholder, partner, beneficiary, or member of a pass through entity is entitled. However, a pass through entity and an individual who is a shareholder, partner, beneficiary, or member of a pass through entity may not claim more than one (1) credit for the qualified expenditure.

SECTION 7. IC 6-3.1-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]:

Sec. 4. ~~(a)~~ As used in this chapter, "taxpayer" means: ~~any individual~~

- (1) a person (as defined in IC 6-3-1-14);**

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1 **(2) a corporation; or**
 2 **(3) a pass through entity;**
 3 that has any state tax liability.

4 (b) Notwithstanding subsection (a), for a credit for a qualified
 5 investment in a business located in an enterprise zone in a county
 6 having a population of more than one hundred five thousand (105,000)
 7 but less than one hundred ten thousand (110,000), "taxpayer" includes
 8 a pass through entity.

9 SECTION 8. IC 6-3.1-31 IS ADDED TO THE INDIANA CODE
 10 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 11 JANUARY 1, 2007 (RETROACTIVE)]:

12 **Chapter 31. Enterprise Zone Job Creation Tax Credit**

13 **Sec. 1. As used in this chapter, "base taxable year" means**
 14 **either:**

- 15 **(1) in the case of a taxpayer that has not previously claimed a**
 16 **tax credit under this chapter, the taxpayer's taxable year that**
 17 **immediately precedes the taxable year for which the taxpayer**
 18 **first claims a credit under this chapter; or**
 19 **(2) in the case of a taxpayer that has previously claimed a tax**
 20 **credit under this chapter, the most recent taxable year for**
 21 **which the taxpayer claimed a credit under this chapter.**

22 **Sec. 2. As used in this chapter, "board" refers to the board of**
 23 **the Indiana economic development corporation created under**
 24 **IC 5-28-4.**

25 **Sec. 3. As used in this chapter, "enterprise zone" means an**
 26 **enterprise zone created under IC 5-28-15.**

27 **Sec. 4. As used in this chapter, "full-time employee" means an**
 28 **individual who:**

- 29 **(1) is employed for consideration for at least thirty-five (35)**
 30 **hours each week; or**
 31 **(2) renders any other standard of service generally accepted**
 32 **by custom or specified by contract as full-time employment.**

33 **Sec. 5. (a) As used in this chapter, "new employee" means a**
 34 **full-time employee who is:**

- 35 **(1) first employed by a taxpayer at the taxpayer's enterprise**
 36 **zone location; and**
 37 **(2) employed after December 31 of the taxpayer's previous**
 38 **taxable year.**

39 **(b) The term does not include:**

- 40 **(1) an employee of a taxpayer who performs a job that was**
 41 **previously performed by another employee, if that job existed**
 42 **for at least six (6) months before hiring the new employee;**

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(2) an employee of a taxpayer who was previously employed in Indiana by a related member of the taxpayer and whose employment was shifted to the taxpayer; or

(3) a child, grandchild, parent, or spouse, other than a spouse who is legally separated from an individual, of any individual who is an employee of the taxpayer and who has a direct or an indirect ownership interest of at least five percent (5%) in the profits, capital, or value of the taxpayer. For purposes of this subdivision, an ownership interest shall be determined in accordance with Section 1563 of the Internal Revenue Code and regulations prescribed under that Section.

(c) Notwithstanding subsection (b)(1), if a new employee performs a job that was previously performed by an employee who was:

(1) considered a new employee under this chapter; and

(2) promoted by the taxpayer to another job;

the employee may be considered a new employee.

Sec. 6. As used in this chapter, "pass through entity" has the meaning set forth in IC 6-3.1-10-1.7.

Sec. 7. As used in this chapter, "related member" has the meaning set forth in IC 6-3.1-13-8.

Sec. 8. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax);

(2) IC 6-5.5 (financial institutions tax); and

(3) IC 27-1-18-2 (insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 9. As used in this chapter, "taxpayer" means a person, corporation, or pass through entity that has any state tax liability and conducts business operations in an enterprise zone.

Sec. 10. (a) A taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year equal to the amount determined under the following STEPS:

STEP ONE: Determine the lesser of:

(A) the number of new employees employed at the taxpayer's enterprise zone location in the taxable year; or

(B) the greater of zero (0) or the result of:

(i) the total number of full-time employees employed by the taxpayer at the taxpayer's enterprise zone location in the taxable year; minus

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(ii) the total number of full-time employees employed by the taxpayer at the taxpayer's enterprise zone location in the taxpayer's base taxable year.

STEP TWO: Multiply the amount determined under STEP ONE by two thousand dollars (\$2,000).

(b) A taxpayer may petition the board to adjust the total number of full-time employees considered employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year if the taxpayer shows that:

- (1) a new investment;
- (2) a new product line; or
- (3) other similar circumstances;

will result in the creation of new full-time jobs at the taxpayer's enterprise zone location but would not qualify the taxpayer for a credit under this chapter because employment at the enterprise zone location would remain below the level established in the taxpayer's base taxable year.

(c) The board shall consider a petition submitted under subsection (b). The board may approve a taxpayer's petition if the board determines that adjusting the total number of full-time employees considered employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year is in the best interest of the enterprise zone in which the taxpayer is located. If the board approves the petition, the board shall determine the new number of full-time employees considered employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year, according to the totality of the circumstances described in the taxpayer's petition. The board shall certify the new number to be used for purposes of this chapter to the taxpayer and the department.

Sec. 11. (a) If the credit amount determined under section 10 of this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the following taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or a refund of any unused credit.

Sec. 12. If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal

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to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

Sec. 13. To receive a credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return in the manner prescribed by the department. The taxpayer must submit to the department all information that the department determines is necessary for the calculation of the credit provided by this chapter.

SECTION 9. [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]
(a) IC 6-1.1-45-12, as amended by this act, applies to assessment dates occurring after February 28, 2007, for property taxes first due and payable after December 31, 2007.

(b) IC 6-3.1-10-4, as amended by this act, applies to taxable years beginning after December 31, 2006.

SECTION 10. [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)] IC 6-3.1-7-2, as amended by this act, and IC 6-3.1-31, as added by this act, apply to taxable years beginning after December 31, 2006.

SECTION 11. An emergency is declared for this act.

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